IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
TUESDAY, THE TWENTY SECOND DAY OF JUNE
TWO THOUSAND AND FOUR
PRESENT
THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY
and
THE HON'BLE MR JUSTICE GHULAM MOHAMMED

WRIT APPEAL NO : 916 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 5.5.2004 in W.P No. 8844 of 2004 on the file of the High Court.)

Between:

S. Naresh Babu, S/o. S. Ambaji Rao,
Aged 52 years, Occupation: Business,
R/o. 16 & 17, G-23, Sector 7,
Rohini, Delhi - 110 085

..... APPELLANT

AND

1 The Food Corporation of India, Headquarters, New Delhi rep by its Manager-Sales
2 The Food Corporation of India, III Floor, HACA Bhavan, Public Garden Road, Hyderabad - 500 004 rep by its Regional Manager

.....RESPONDENTS

Counsel for the Appellant: Mr. M.GOVIND REDDY

For the Respondent Nos.1 and 2: Mr. B. Anjaneyulu, Standing Counsel for the Food Corporation of India.

The Court made the following Judgment : (per Sri BRSR,J)

The appellant herein filed Writ Petition No. 8844 of 2004 challenging tender notification No. S&S 12(3)/2002-2004 dated 28.4.2004 issued by the Food Corporation of India calling for

sealed offers for disposal of maize of Andhra Pradesh, Rajasthan and Chhathisgarh. The last date for submission of offer was 5.5.2004 up to 3.00 PM. The public sector undertakings were accordingly permitted to depute their representatives on the said date and time of opening of the sealed offers.

The appellant herein earlier participated in the bid for purchase of maize from the Food Corporation of India through the tender notification published in the newspapers on and around 18.2.2004. He became the highest bidder for procurement of maize from Karimnagar stock and Mahabubnagar stock at the rate of Rs. 491/- per quintal and Rs.493/- per quintal respectively. The quantity bid by the appellant herein was approximately 4,900 metric tones. The actual allotment was made on 27.3.2004. The appellant having realized that there were abundance in stocks lying down in Andhra Pradesh, he requested to the Corporation vide letter dated 15.3.2004 to allot further quantity of 1.00 lakh metric tones at the same rate which was found to be highest price in comparison to other tenderers. His request was not acceded to.

Be it as it may, the respondent-Corporation with a view of dispose of further quantity of maize issued further notification referred to hereinabove restricting the enquiry only in favour of seven public sector undertakings including the Karnataka State Cooperative Marketing Federation Limited. It is that tender notification/enquiry which is challenged in the writ petition. The learned single Judge dismissed the writ petition at the admission stage and rightly, so in our considered opinion.

Sri Govind Reddy, learned counsel for the appellant strenuously contended that the procedure adopted by the Food Corporation of India restricting the tender enquiry and confining the same amongst

the seven public sector undertakings as illegal and contrary to the decision of the Bombay High Court in **Surendrakumar Tilakkumar Agarwal v. Food Corporation of India**[1].

We find no merit in the submission. The petitioner claims to be an authorized representative of the Karnataka State Cooperative Marketing Federation Limited and the said Federation itself has been invited to participate in the tender process. It is rather surprising to notice that the public sector undertaking whom the petitioner claims to represent having invited by the Food Corporation of India could not have been allowed to challenge the proceedings on the ground that the enquiry was restricted only amongst seven public sector undertakings. The petitioner who claims to be the authorized representative cannot be in a better position than the Karnataka State Cooperative Marketing Federation Limited. The writ petition deserves dismissal on this ground alone.

It was further contended that the procedure adopted by the Corporation is illegal. Reliance has been placed upon the decision of the Bombay High Court referred to hereinabove. It was a case where certain stocks held by the Food Corporation of India were sought to be sold by keeping the method of disposal of the stocks on top secret and they were about to distribute the stocks to the persons of their choice without inviting tenders or putting up a public notice or calling upon general public to purchase such quantity. The procedure sought to be adopted was found fault and rightly so and the matter was closed on the undertaking given by the Food Corporation of India that they would abide by the rules in the matter of disposal of the stocks. In the instant case, there is no secret deal as such. The Food Corporation of India having taken the experience and the status of the seven public sector undertakings who had earlier participated in the bid invited sealed

tenders from amongst the seven public sector undertakings. Public sector undertakings stand on a different footing and the Corporation was entitled in law to confine enquiries only amongst the public sector undertakings. In fact, the petitioner who claims to be a representative of Karnataka State Cooperative Marketing Federation Limited could have participated as an authorized representative of the said federation. But instead of doing so, he did not participate in the tender process perhaps expecting that the Corporation would part away with 1.00 lakh metric tonnes of maize in his favour at the same rate at which he became the highest bidder pursuant to a different tender issued by the Food Corporation of India. The appellant, in law, is not entitled to insist that some further stocks should be alienated in his favour by the Food Corporation at the same rate at which be became the highest bidder. Food Corporation of India is entitled to invite repeated tenders for the purpose of disposal of the stocks at its disposal and it accordingly invited tenders confining the same amongst seven public sector undertakings. Obviously, such a decision was taken in public interest. Therefore, the Corporation did not commit any illegality.

Be it as it may, the successful bidders we are told have already deposited the amounts and commenced the process of lifting of the stocks.

Viewed from any angle, we find no merit in the writ appeal. We arrive at the same conclusion to dismiss the writ petition as the one arrived by the learned single Judge but for different reasons.

The Writ Appeal shall accordingly stand dismissed. No costs.

(B. Sudershan Reddy, J)

22..06..2004

(Ghulam Mohammed, J)

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.....DEPUTY REGISTRAR

//TRUE COPY//

……..SECTION OFFICER

One fair copy to the Hon'ble Sri Justice B. Sudershan Reddy (for his lordships kind perusal)

To

1. The Food Corporation of India, Headquarters, New Delhi rep by its Manager-Sales.
2. The Food Corporation of India, III Floor, HACA Bhavan, Public Garden Road, Hyderabad - 500 004 rep by its Regional Manager.
3. 2 CD copies.

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[1] 1998 AIHC 1599